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A . Report Title: EPCRA's New Guidance: Impacts on DoD Reporting and Targets

B. DATE Report Downloaded From the Internet 8/21/98

C. Report's Point of Contact: (Name, Organization, Address, Office Symbol, & Ph #): GAIA Corporation
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D. Currently Applicable Classification Level: Unclassified

E. Distribution Statement A: Approved for Public Release

F. The foregoing information was compiled and provided by:
DTIC-OCA, Initials: um **Preparation Date:** 8/21/98

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EPCRA's New Guidance: Impacts on DoD Reporting and Targets

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Overview

Department of Defense (DoD) installations have reporting responsibilities under the Emergency Planning and Community Right-to-Know Act (EPCRA), as well as a mandate to reduce reportable releases by the end of 1999. While DoD has been implementing approaches to meet EPCRA's complex threshold and reporting requirements, EPA has made significant changes to the regulated chemicals, thresholds, and guidance.

This paper summarizes EPCRA developments through June 1998 for their impact on DoD compliance, with particular focus on the expanded thresholds and recent guidance, including:

- Potential impacts of EPA's proposed revisions to Section 311 and 312 reporting for gasoline and diesel fuel.
- Effects of EPA's expanded definition for the EPCRA Section 313 "Otherwise Use" threshold.
- EPA's recent guidance, including the revised Section 313 Question & Answer document, and guidance developed for the newly added industries.
- New interpretations and policies for reporting sulfuric acid aerosols, ammonia in wastewater treatment plants, and nitrate compounds.
- Recent developments in other environmental programs, such as the Clean Air Act Amendment Risk Management Plan requirements, which overlap with EPCRA.
- Continued efforts to expand Section 313 reporting to include toxic chemical use information.

The paper concludes with considerations for the importance of managing on-going EPCRA developments and maintaining compliance.

AQ I 98-11-2321

Overview of EPCRA Requirements and Recent Changes

U.S. Department of Defense installations are covered by the Emergency Planning and Community Right-to-Know Act (EPCRA) due to Executive Order 12856, which was signed by President Clinton on 3 August 1993. EO 12856 applied EPCRA requirements to federal facilities and waived the SIC code criterion for reporting under section 313. All other provisions of EPCRA and the PPA apply to military facilities as to industrial operations.

EPCRA requires that the chemicals and mixtures present on-site, and involved in particular types of activities, be evaluated against five types of EPCRA reporting: emergency planning, release notification, identity and composition of mixtures, inventory, and annual TRI releases.

EPCRA Emergency Planning Requirements (Sections 301-303) are designed to improve community-wide emergency response and preparedness through coordination and planning at the local and state levels. DoD installations are required to notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) about the identity and amounts of EHSs present in quantities above the threshold planning quantities (TPQ). The information must be updated to reflect "any changes occurring at the facility which may be relevant to emergency planning."

Although EPA has not revised the EPCRA Section 301-303 requirements that apply to DoD facilities, other programs, such as the Clean Air Act Risk Management Plan requirements (as described below) must be factored into overall installation-wide emergency planning.

Emergency Notification (Section 304) requires DoD installations to notify all affected LEPCs and SERCs about chemical releases beyond the facility boundary in 24 hours, if the release exceeded the reportable quantity (RQ) limit for any extremely hazardous substance (EHS), or CERCLA section 102(a) substance. Immediate notification is required, with written follow-up to describe the spill and response actions taken.

Recent revisions to the Section 304 chemical lists that must be covered by DoD installations' emergency release reporting include:

- EPA added 58 chemicals to the RCRA Subtitle C hazardous waste list in February 1995, a change that became effective July 12, 1995. Those materials were also added to the CERCLA hazardous substance list by reference, and therefore, became covered under EPCRA section 304 reporting. (60 FR 7825; edits 60 FR 19165 and 25619)
- EPA revised the RQs of 47 hazardous air pollutants, 5 Clean Air Act Categories, and 11 RCRA wastes or proposed wastes on June 12, 1995 (60 FR 30926). The changes become effective July 12, 1995 and affect RQ's of seven Extremely Hazardous Substances. The RQ of ethylene glycol was set to 5,000 pounds.

Community Right-to-Know (Sections 311-312) requires facilities to report on amounts and hazards of the mixtures and chemicals present on-site in excess of specific limits. Reports are required in the form of: MSDSs or a list of MSDSs (under Section 311), and an annual Tier II inventory of chemicals (under Section 312). Reports are submitted to LEPCs, SERCs, and fire departments.

On 8 June 1998, EPA proposed to revised the reporting requirements for EPCRA section 311 and 312 reporting (63 FR 31268-31317). Although these changes are not yet final, the impact on DoD installation's Tier II reports next March may be very significant if the rule is finalized during 1998, as EPA is predicting. Specific issues in the proposed revisions include:

- Raising the threshold for gasoline to 75,000 gallons for the combined amount of all gasoline grades, when stored in tanks that are entirely underground at gas stations. Similarly, the threshold is proposed to be raised to 100,000 gallons for the combined amount of diesel fuel stored in tanks that are entirely underground at gas stations. These thresholds are to be limited to retail gas stations, and are proposed by EPA to not apply to motor pools, marinas, propane fuels, and other types of locations.
- Raising the threshold for certain chemicals (list to be determined) to an "infinite threshold" level if the chemicals present a "minimal hazard and minimal risk" beyond the facility boundary to the community and the environment.
- The notice also provides clarification to some of the reporting requirements that previously caused confusion, including mixture reporting.

Toxic Release Inventory Reporting (Section 313): requires facilities that meet manufacture, process, or otherwise use activity thresholds for toxic chemicals to prepare an annual Form R report, which contains data on all ways that the chemical is: treated or recycled on-site; sent off-site; and released to the environment.

Expansions and revisions to guidance for EPCRA section 313 are many and varied, and include:

- Phase 2 industry expansion (62 FR 23834; 5/1/97) becomes effective 1/1/98, and not only extended EPCRA TRI reporting to seven commercial industrial service sectors, but also redefines the "otherwise use" threshold category. Otherwise use will be redefined for reports due July 1999 to include manufacture of a chemical in waste treatment activities, as well as treatment for destruction, disposal, or stabilization of a chemical if the waste management is performed on waste received from other locations. Therefore, any military installation that receives waste from other locations for disposal, treatment, or destruction must calculate the amounts of EPCRA section 313 toxic chemicals contained in the waste and include the chemicals in their calculation of the otherwise use threshold for the chemicals.

- In 1997, EPA inserted a little-known change to the reporting requirements for off-site transfers of metals and metal compound categories. Page 44 of the revised 1996 instruction document for Form R states that off-site transfers of metals and metal compounds should not be reported in section 8.7 "Quantity Treated Off-Site," but should instead be reported in section 8.1 "Quantity Released," which includes off-site transfers for disposal. This change extends to off-site transfers of metals and metal compounds to POTWs, which are reported in section 6.1, and should now be included in section 8.1, rather than 8.7.
- EPA "final guidance documents" for the newly added industries became available on EPA's Internet site in early October 1997, but EPA has revised the documents based on issues raised by the industries. Although these documents are designed for the new industries, they contain a number of issues that conflict with existing EPA, DoD, and U.S. Air Force guidance on EPCRA reporting.
- Effective November 3, 1997, EPA changed the address for courier delivery of TRI reports to: EPCRA Reporting Center, c/o Computer Based Systems, Inc., Suite 300, 4600 North Fairfax Drive, Arlington, VA 22203.
- EPA reissued the Section 313 Questions and Answers Document in November 1997 (EPA 745-B-97-008). The revised document includes the effects of the Pollution Prevention Act and other changes. Appendices to the document provide more comprehensive information on complex reporting issues.
- In February 1998, EPA prepared a Questions and Answers document aimed at the newly added industries, which contains some revised interpretations that will affect all reporting facilities. Some of the interpretations in the guidance conflict with existing EPA and DoD guidance. This Q&A document is currently only available on EPA's Internet site (<http://www.epa.gov/opptintr/tri/>).
- Phase 3 expansion: EPA still plans to require reporting for chemical use or materials management information based on an Executive Memorandum of August 8, 1995. EPA's position paper on reporting of chemical use or materials accounting information became available October 5, 1995, and despite strong opposition, and lack of clear information on how chemical use information can be applied, EPA remains committed that "full materials accounting information provides important insights." EPA published an Advance Notice of Proposed Rulemaking on October 1, 1996 (61 FR 51322), and plans to release a proposed rule in late 1998. Various data are being considered, including amounts of chemicals received at facilities, amounts contained in products, and amounts created or destroyed in processes, as well as amounts disposed of in wastes. When the proposed approach is finally developed, it will be essential for DoD installations to consider the possible impact on data collection and reporting under EPCRA and other environmental programs.

Recent Developments in Other Environmental Programs

The Clean Air Act Amendments (CAAA) were signed into law on 15 November 1990 (U.S.C. 7412). Late 1996, EPA established new regulations under section 112(r) of the Clean Air Act Amendments that will require military installations to perform detailed, process-specific evaluations for the amounts of certain chemicals involved in on-site activities (61 FR 31668; 40 CFR 68). The goal of the new requirements is to prevent accidental releases and minimize consequences of releases by focusing on highest risk chemicals and operations. Section 112(r) gives DoD installations the obligation to prevent accidents, operate safely, and manage hazardous chemicals in safe and responsible way. All stationary facilities are required to evaluate their operations for the presence of specific chemicals; develop Risk Management Plans that identify chemical hazards; work to reduce accidental chemical release potential and severity. CAA Section 112(r) covers a specific list of 139 Regulated Substances, which was initially developed based on the EHSs regulated under EPCRA. Each chemical has a threshold quantity, that when exceeded in a single "process" requires the facility to include the chemical in the Risk Management plan. The limits for Regulated Substances that are toxics range from 500 to 20,000 pounds, and the limit for each flammables is 10,000 pounds. Each Regulated Substance also has an established toxic or flammable endpoint, and the distance to that chemical's endpoint is a required part of the development of scenarios for the Risk Management Plan.

The level of detail involved in the plans will require that the information assembled be coordinated with current emergency planning, response, and management efforts to assure that consistent data are made available for use by on-site emergency planners, as well as regulatory agencies, and the public. EPCRA data that have been reported by military installations are currently be evaluated by regulatory agencies and as the basis for comparisons between waste reduction plans of facilities, and against commercial industry sectors. Risk Management Plan information can be expected to be applied to similar types of uses.

With the increased focus on public data access and risk in the prioritization of environmental issues, the Risk Management Plans can be expected to provide the basis for future environmental issues, requirements, regulatory controls, and enforcement activities that DoD operations will face.

Managing EPCRA Expansions

EPCRA is the one environmental regulatory program that EPA continues to expand. Increased focus is being placed on the release and spill reporting aspects of EPCRA through an Earth Day announcement from Vice President Gore, which included a call for industry to provide more health effect and risk information about the chemicals that they release.

DoD has already invested in EPCRA compliance. As EPA expands the chemical lists, tightens regulatory limits, and continues to make more data directly available on Internet, DoD installations must carefully accommodate the changes by revising tracking software,

expanding reporting procedures, and maintaining the records to show that the appropriate modifications have been made. EPCRA is an ever-evolving set of requirements; however, the most important challenge will be to carefully evaluate all EPCRA data reported for possible impact on other environmental programs, including the potential to establish benchmarks that may become default standards for the installation's next round of air and water permit negotiations.

A bill is under consideration in both houses of Congress, with the title of "Children's Health Protection and Right-To-Know More," which would expand EPCRA to cover all Federal facilities. Currently, DoD installations have the opportunity to establish EPCRA programs without the extreme monetary penalties faced by industry; penalties that can reach as high as \$ 27,500 per day, per chemical, per year, per facility. Establishing and maintaining an EPCRA compliance program is essential, both to demonstrate DoD's ability to meet the requirements of the Executive Order (and that further legislative mandates are unnecessary), and to assure that compliance can be achieved if Federal facility coverage by EPCRA becomes a matter of law in the pending election year.

About the author:

June C. Bolstridge is President of the GAIA Corporation, and is certified as a Qualified Environmental Professional. She has more than 15 years experience assisting manufacturing and industrial corporations, and government agencies, including DoD, DoE, and EPA. Ms. Bolstridge provided support for EPA's implementation of EPCRA during its initial four years and assisted in the development of many of the EPA's instructional and guidance documents.

Ms. Bolstridge currently provides EPCRA technical assistance and training to federal and manufacturing facilities, and developed GAIA Corporation's *EPCRA Manual* and *EPCRA Handbook* to assist DoD facilities in meeting the EPCRA requirements. She is an adjunct professor at Johns Hopkins University, where she teaches a graduate-level Risk Management course in the Environmental Engineering and Science program.

Ms. Bolstridge holds a Masters in Environmental Engineering from the Univ. of Washington, and a B.S. Degree with Honors in Botany and Chemistry from SUNY College of Env. Science and Forestry, and Syracuse Univ.